

IP 98-0002-CR 1 H/F USA v Nunn
Judge David F. Hamilton

Signed on 04/04/08

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause No. IP 98-002-cr-1-H/F
)	
DAMON C. NUNN,)	
)	
Defendant.)	

ENTRY ON MOTION FOR REDUCED SENTENCE

In 1998, the court sentenced defendant Damon Nunn to 188 months in prison for possession of more than 800 grams of crack cocaine with intent to distribute it. The original sentence reflected a downward departure equivalent to two offense levels under the Sentencing Guidelines based on the defendant's substantial assistance to the government. Nunn has now filed a motion for a reduction of his sentence based on 18 U.S.C. § 3582(c) and Amendments 706 and 711 to the Sentencing Guidelines, which retroactively reduced the base offense levels for crack cocaine offenses. As explained below, the court grants the motion and reduces Nunn's sentence to 151 months, which is the bottom of the guideline range two levels below his current sentence of 188 months.

The original sentence in this case was based on the Sentencing Guidelines applicable at the time. The base offense level was 36 for a quantity of more than 500 grams but less than 1,500 grams of crack cocaine. The court added two levels under U.S.S.G. § 2D1.1(b)(1) because law enforcement found a loaded shotgun and a loaded handgun in Nunn's residence when they searched it. Nunn received a three-level discount for acceptance of responsibility, so that the final total offense level was 35. By the age of 25 in 1999, Nunn had worked his way up to criminal history category IV, so the guideline range was 235 to 293 months. The court imposed a sentence of 188 months, which reflected a two-level downward departure from the bottom of that range based on Nunn's substantial assistance to the government.

Amendment 706 to the Sentencing Guidelines reduced the base offense level for most crack cocaine offenses by two levels, and Amendment 711 stated that Amendment 706 may be applied retroactively to defendants pursuant to 18 U.S.C. § 3582(c)(2). Under the amended Guidelines, the base offense level for Nunn's crime would be 34. Using the same adjustments for firearms and acceptance of responsibility, the amended guideline range would be 188 to 235 months, for offense level 33 and criminal history category IV. Applying that amended guideline range would leave Nunn's sentence unchanged, but also would not give him the benefit of a downward departure for substantial assistance.

The Sentencing Guidelines address this situation in the Application Notes for U.S.S.G. § 1B1.10. In the italicized sentence below, Note 3 specifically addresses retroactive guideline amendments when the original sentence was a downward departure, as it was in this case:

Under subsection (b), the amended guideline range and the term of imprisonment already served by the defendant limit the extent to which an eligible defendant's sentence may be reduced under 18 U.S.C. § 3582(c)(2). *When the original sentence represented a downward departure, a comparable reduction below the amended guideline range may be appropriate*; however, in no case shall the term of imprisonment be reduced below time served. Subject to these limitations, the sentencing court has the discretion to determine whether, and to what extent, to reduce a term of imprisonment under this section.

In Nunn's case, a comparable reduction would be to 151 months, two levels below the amended guideline range.

In opposing Nunn's motion for reduced sentence, the government has pointed out that Nunn is not necessarily entitled to a reduced sentence. The government has reminded the court about the two loaded firearms found in Nunn's residence, along with the crack, and about his criminal history. The court believes those factors have been adequately considered in the firearm adjustment and the criminal history category, both of which remain in effect in the calculation of the amended guideline range. Denying Nunn a reduction here would effectively nullify the reduction he received for substantial assistance.

The court has also considered the fact that Nunn has not had any serious discipline problems as a prisoner, and he has made some efforts toward rehabilitation, earning his GED degree. Nunn was 25 years old at the time of his arrest. He is now 35 years old and will be 36 by the time a reduced sentence would be completed. He has spent most of his adult life in prison. At this point, he must understand that any further trouble with the law will produce an extremely heavy sentence. In the choice between his current sentence of 188 months and a reduced sentence of 151 months, the court believes the 37-month difference is unlikely to add substantially either to the rehabilitative effects of the sentence or to its deterrent and retributive purposes. Nunn received a stiff sentence based on Sentencing Guidelines that the Sentencing Commission itself has found unreasonable and unduly harsh. He will be subject to stringent conditions of supervised release such that any relapse into drug dealing or other unlawful behavior should be caught fairly early, if it occurs.

The court therefore finds that a sentence of 151 months is sufficient but not greater than needed to serve the purposes of sentencing under 18 U.S.C. § 3553(a)(2). Defendant's motion is granted, and his sentence is hereby reduced to 151 months.

So ordered.

Date: April 4, 2008

DAVID F. HAMILTON, CHIEF JUDGE

United States District Court
Southern District of Indiana

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